

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

Avista Corporation,
The Bonneville Power Administration,
Idaho Power Company,
The Montana Power Company,
Nevada Power Company,
PacifiCorp,
Portland General Electric Company,
Puget Sound Energy, Inc.,
Sierra Pacific Power Company

Docket Nos. RT01-35-002
and RT01-35-003

ORDER GRANTING CLARIFICATION OF PRIOR ORDER

(Issued September 12, 2001)

In this order, we grant RTO West Filing Utilities' request for clarification that it is not required to make a compliance filing in response to the Commission's order issued on July 12, 2001 in this proceeding.¹

Background

The July 12 Order granted rehearing in part and granted clarification in part of the Commission's April 26, 2001 declaratory order, which concerned RTO West's and TransConnect's preliminary plans to form a regional transmission organization and an independent transmission company.² In pertinent part, the July 12 Order reaffirmed the April 26 Order's rejection of RTO West Filing Utilities' limited liability proposal to the

¹Avista Corp., et al., 96 FERC ¶ 61,058 (2001) (July 12 Order). RTO West Filing Utilities consist of Avista Corporation, Bonneville Power Administration, Idaho Power Company, Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc. and Sierra Pacific Power Company.

²See 95 FERC ¶ 61,114 (2001) (April 26 Order).

extent that it sought to limit the rights of transmission customers and other third parties.³ The July 12 Order directed RTO West Filing Utilities to submit a compliance filing within 30 days of the date of the order in accord with that determination.⁴

On July 25, 2001, RTO West Filing Utilities filed a response to the July 12 Order. They state that they will file a revised liability proposal as part of their Stage 2 filing. However, they contend that, as a procedural matter, it is premature to order a compliance filing in this proceeding because (1) this proceeding concerns their petition for a declaratory order as to whether their RTO proposal would qualify for RTO status and (2) they have not yet made any filings pursuant to section 203 or section 205 of the Federal Power Act.⁵ Notice of RTO West Filing Utilities' July 25 response was published in the Federal Register, 66 Fed. Reg. 41,870 (2001), with interventions or protests due on or before August 24, 2001.⁶ On August 28, 2001, British Columbia Hydro and Power Authority (BC Hydro) filed a motion for leave to file comments out of time and comments in support of RTO West Filing Utilities. On August 29, 2001, Allegheny Energy Supply Company, LLC (AE Supply) filed a motion to intervene out-of-time, raising no substantive issues.⁷

On August 13, 2001, RTO West Filing Utilities filed a request for clarification, or in the alternative, request for rehearing of the July 12 Order. This request reiterates the arguments in their July 25 response, *i.e.*, that procedurally, it was premature for the July 12 Order to require a compliance filing. RTO West Filing Utilities further state that they anticipate making appropriate filings under sections 203 and 205 in the future, assuming satisfactory resolution of concerns identified in their petition for declaratory order.

³96 FERC at 61,180-82.

⁴*Id.* at 61,182-83.

⁵16 U.S.C. §§ 824b, 824d (1994).

⁶RTO West Filing Utilities' July 25 response was treated as a compliance filing, and thus the notice of filing was issued, while we considered their argument concerning the need for a compliance filing.

⁷AE Supply states that it participates in wholesale power markets throughout the United States, including the Western states, and that its interests cannot be represented by any other party. It agrees to accept the record as it stands.

Discussion

In view of the early stage of this proceeding and the lack of any undue prejudice or delay, we find good cause to grant BC Hydro's motion for leave to file comments out of time and AE Supply's late intervention.

In view of the fact that the July 12 Order concerned RTO West Filing Utilities' petition for a declaratory order, and RTO West Filing Utilities have not reflected their proposal in section 203 and section 205 filings, we agree that it was premature to require a compliance filing in the July 12 Order. Accordingly, we will grant RTO West Filing Utilities' request for clarification that they are not required to submit a compliance filing in response to the July 12 Order and dismiss their July 25 response as unnecessary.

The Commission orders:

RTO West Filing Utilities' request for clarification of the July 12 Order is hereby granted, and their July 25 response to the July 12 Order is hereby dismissed as unnecessary, as discussed in the body of this order.

By the Commission.

(S E A L)

David P. Boergers,
Secretary.